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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,365	09/30/2003	Harley Pattee	HJP-105X2C2	5980

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

EXAMINER

UPTON, CHRISTOPHER

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,365

Applicant(s)

PATTEE, HARLEY

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 19-70 and 73-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 23-27, 33-37, 43-47, 50, 51, 54, 55, 58-60, 62-65, 68-70, 73, 74, 76-79, 82 and 83 is/are rejected.
- 7) ☒ Claim(s) 8, 19-22, 28-32, 38-42, 48, 49, 52, 53, 56, 57, 61, 66, 67, 75, 80 and 81 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

1. Applicant's election without traverse of Invention I in the reply filed on December 17, 2004 is acknowledged.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 23-27, 33-37, 43-47, 58-60, 64, 65, 68-70, 73, 74, 78, 79, 82 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torricelli in view of Warner or Carlson.

Torricelli discloses a septic tank made of a plurality of substantially flat panels, with a baffle and lid openings, substantially as claimed. Torricelli does not disclose that the parts are made of plastic. It is known to manufacture septic tanks having flat wall configurations out of plastic, as exemplified by Warner and Carlson. It would therefore have been obvious for one skilled in the art to make the tank of Torricelli out of plastic, for ease of assembly and to provide a lightweight tank.

With respect to claims 58, 70 and their dependent claims, it is submitted that provision of the parts as a "kit" fails to distinguish over Torricelli, as Torricelli is intended to be supplied in pieces and assembled, and that instructions for such assembly would obviously be provided to ensure proper assembly.

4. Claims 1-3, 5, 23, 25, 33, 35, 43, 45, 58-60, 64, 65, 70, 73, 74, 78 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blanchard in view of Warner or Carlson.

Blanchard discloses a septic tank made of a plurality of substantially flat panels, with a baffle, substantially as claimed. Blanchard does not disclose that the parts are made of plastic. It is known to manufacture septic tanks having flat wall configurations out of plastic, as exemplified by Warner and Carlson. It would therefore have been obvious for one skilled in the art to make the tank of Blanchard out of plastic, for ease of assembly and to provide a lightweight tank.

With respect to claims 58, 70 and their dependent claims, it is submitted that provision of the parts as a "kit" fails to distinguish over Blanchard, as Blanchard is intended to be supplied in pieces and assembled, and that instructions for such assembly would obviously be provided to ensure proper assembly.

5. Claims 50, 51, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 46 and 47 above, and further in view of Perry.

Claims 50, 51, 54 and 55 differ from claims 46 and 47 in recitation of a PVC pipe internal support. It is known to use a PVC pipe to provide support to a septic tank, as exemplified by Perry. It would therefore have been obvious for one skilled in the art to add such a support to the septic tank of claims 46 and 47, to strengthen the tank.

6. Claims 62, 63, 76 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 59 or 70 above, and further in view of Lloyd or Osborne.

Claims 62 and 63 differ from claim 59, and claims 72 and 73 differ from claim 70 in recitation of the use of screws to connect the panels. It is well known to use screws to assemble a tank made of a plurality of panels, as exemplified by Lloyd and Osborne. It would therefore have been obvious for one skilled in the art to use screws to connect the panels of the septic tank of claims 59 or 70, to hold the tank together.

7. Claims 8, 19-22, 28-32, 38-42, 48, 49, 52, 53, 56, 57, 61, 66, 67, 75, 80 and 81 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Applicant's arguments filed on August 24, 2005 have been fully considered but they are not persuasive.

Applicant argues that the Torricelli reference is almost 60 years old, the Blanchard reference is over 50 years old, that plastic parts for septic tanks have been known for over 30 years, that no one had combined panels with plastic before, and that this rendered the instant invention non-obvious. It is submitted that it is not necessary to prove prior existence to reject a claim over 35 USC 103, only that the invention be obvious for one of ordinary skill in the art. It is submitted that the combination of the teaching of flat paneled septic tanks, as disclosed by Blanchard and Torricelli with the

known newer material of plastic would have been obvious for one skilled in the art, as plastic is lighter in weight and easier to handle. Note also that Blanchard disclosed that "some other suitable material" may be used instead of concrete (column 2, lines 1-5), and that the secondary references show that plastic is a known and therefore obvious suitable material for septic tanks.

Applicant further argues that the invention has been commercially successful, and that this is evidence of non-obviousness. It is submitted that the two invoices provided fail to show a nexus between the claimed invention and the evidence of commercial success. It is also noted that the evidence of commercial success must be commensurate in scope with the claims. It is further submitted that there is no comparative data between the invention as claimed and other septic tanks, or even evidence of a sale to any party other than the single party named in the two invoices, and that therefore such evidence is inadequate to establish commercial success as a basis of non-obviousness.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and

any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'CU' with a stylized flourish.

Christopher Upton
Primary Examiner
Art Unit 1724